

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ELVA MARTINEZ,

*Plaintiff,*

v.

STATE FARM LLOYDS,

*Defendant.*

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CIVIL ACTION NO. \_\_\_\_\_

JURY

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DEFENDANT STATE FARM LLOYDS' NOTICE OF REMOVAL

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Defendant State Farm Lloyds files this Notice of Removal, because diversity of citizenship jurisdiction exists under 28 U.S.C. § 1332.

**PROCEDURAL BACKGROUND**

1. Plaintiff Elva Martinez filed this action on August 22, 2019 against State Farm Lloyds in the 127<sup>th</sup> Judicial District Court of Harris County, Texas. The case was docketed under cause number 2019-58681 (the "State Court Action").
2. State Farm Lloyds was served with citation and Plaintiff's Original Petition on August 30, 2019. The statutory deadline to remove this action under 28 U.S.C. §1446(b)(1) is 30 days after Defendant's receipt of the initial pleading.
3. State Farm Lloyds timely files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 127<sup>th</sup> Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.
4. State Farm Lloyds filed its Original Answer on September 21, 2019.

### **NATURE OF THE SUIT**

5. This lawsuit involves a dispute over the handling and alleged under-payment of Plaintiff's claim for damages allegedly caused by a storm in Baytown, Texas that occurred on or about August 28, 2017.<sup>1</sup> Plaintiff asserts causes of action against State Farm Lloyds for: (1) breach of the insurance contract; (2) violations of the Prompt Payment of Claims Act; (3) bad faith; (4) violations of the Texas Insurance Code; and (5) violations of the DTPA.<sup>2</sup>

### **BASIS FOR REMOVAL**

6. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

#### **A. Diversity of the Parties**

7. Removal is proper because there is and was complete diversity between the parties under 28 U.S.C. § 1332 both at the time of the filing of Plaintiff's Original Petition and at the time of its removal to this Court.

8. Plaintiff was, at the time of filing this lawsuit, and still is, a citizen of Harris County, Texas and resides in Harris County, Texas.<sup>3</sup>

9. State Farm Lloyds was at the time this action was commenced, and still is, a citizen of Illinois. State Farm Lloyds is a "Lloyds Plan" organized under Chapter 941 of the Texas Insurance Code. It consists of an unincorporated association of underwriters

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<sup>1</sup> Plaintiff's Original Petition, ¶ 12.

<sup>2</sup> *Id.* at ¶ 16-29.

<sup>3</sup> *Id.* at ¶ 4.

who were at the time this action was commenced, and still are, all citizens and residents of Illinois, thereby making State Farm Lloyds a citizen of Illinois for diversity purposes.<sup>4</sup>

**B. Amount in Controversy**

10. Plaintiff seeks damages in an amount over \$200,000 but not more than \$1,000,000, in her Petition.<sup>5</sup> Accordingly, the “amount in controversy” requirement of 28 U.S.C. § 1332(a) is satisfied because Plaintiff seeks damages in excess of \$75,000.00.

**REMOVAL IS PROCEDURALLY CORRECT**

11. This notice of removal is timely under 28 U.S.C. § 1446(b). State Farm Lloyds was served with process on August 30, 2019.

12. Venue is proper in this division under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

13. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon State Farm Lloyds in the State Court Action are attached to this notice as Exhibit B.

14. Additionally, all documents required by Local Rule 81 to be filed with this Notice of Removal are attached and indexed in Exhibit A.

15. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will promptly be given to all parties and to the clerk of the 127<sup>th</sup> Judicial District Court of Harris County, Texas.

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<sup>4</sup> See *Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members).

<sup>5</sup> See Plaintiff’s Original Petition, ¶ 2 (emphasis added).

### **JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, State Farm Lloyds demands a trial by jury.

### **PRAYER**

Defendant respectfully requests that the State Court Action be removed and placed on this Court's docket for further proceedings. Defendant also requests any additional relief to which it may be entitled.

Respectfully submitted,

By: /s/ M. Micah Kessler

M. Micah Kessler

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was duly served upon counsel of record by U.S. Mail, certified return receipt requested and electronic service on September 27, 2019, as follows:

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/s/ M. Micah Kessler  
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